TBAHU ACA Update

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November Updates

DOL AUDIT AND COMPLIANCE

- *DOL Audit Triggers*

EMPLOYER PENALTY

- *Pay or Play*
- *Two Tests*

MARKETPLACE ENROLLMENT

- *Updates and Information*

SUBSIDIES

- *Eligibility*
- *Premium Tax*
- *Cost Sharing*

RECENT REGULATORY AND LEGAL ACTIVITY

- *Cadillac Tax Update*
- *Small Group Market Expansion Update*
- *Automatic Enrollment Repealed*

DOL AUDIT COMPLIANCE

- *DOL Audit Triggers*

DOL Audit and Compliance

Penalties for noncompliance and other errors found during an audit can be steep. For example, during the 2013 fiscal year, more than **70** percent of audits resulted in monetary fines or other corrective action. There are several factors that increase or indicate your likelihood of being audited, including the common triggers listed below.

DOL Audit Triggers -Common triggers for a DOL audit include these preventable causes:

- **Participant complaints**. If any of your plans' participants complain to the DOL about potential ERISA violations, your plan will likely be subjected to an audit. For example, according to a DOL audit summary, 775 new investigations in 2013 resulted from participant complaints.
- **Incomplete or inconsistent information**. The DOL is more likely to investigate a plan that has incomplete answers on the plan's **Form 5500**, or if information you report is inconsistent from year to year.
- Another reason your plan might be selected for a DOL audit is due to the DOL's national enforcement priorities or projects, which focus investigative resources on certain issues. According to the DOL, the following are areas of heightened importance for audits:
- **Major case enforcement**. EBSA is focusing on major cases in order to best protect areas that have the greatest impact on plan assets and participants' benefits.
- **Employee contributions initiative.** EBSA is focusing on delinquent employee contributions in order to help protect employee contributions to their 401(k), health care and other plans.

DOL Document Checklist

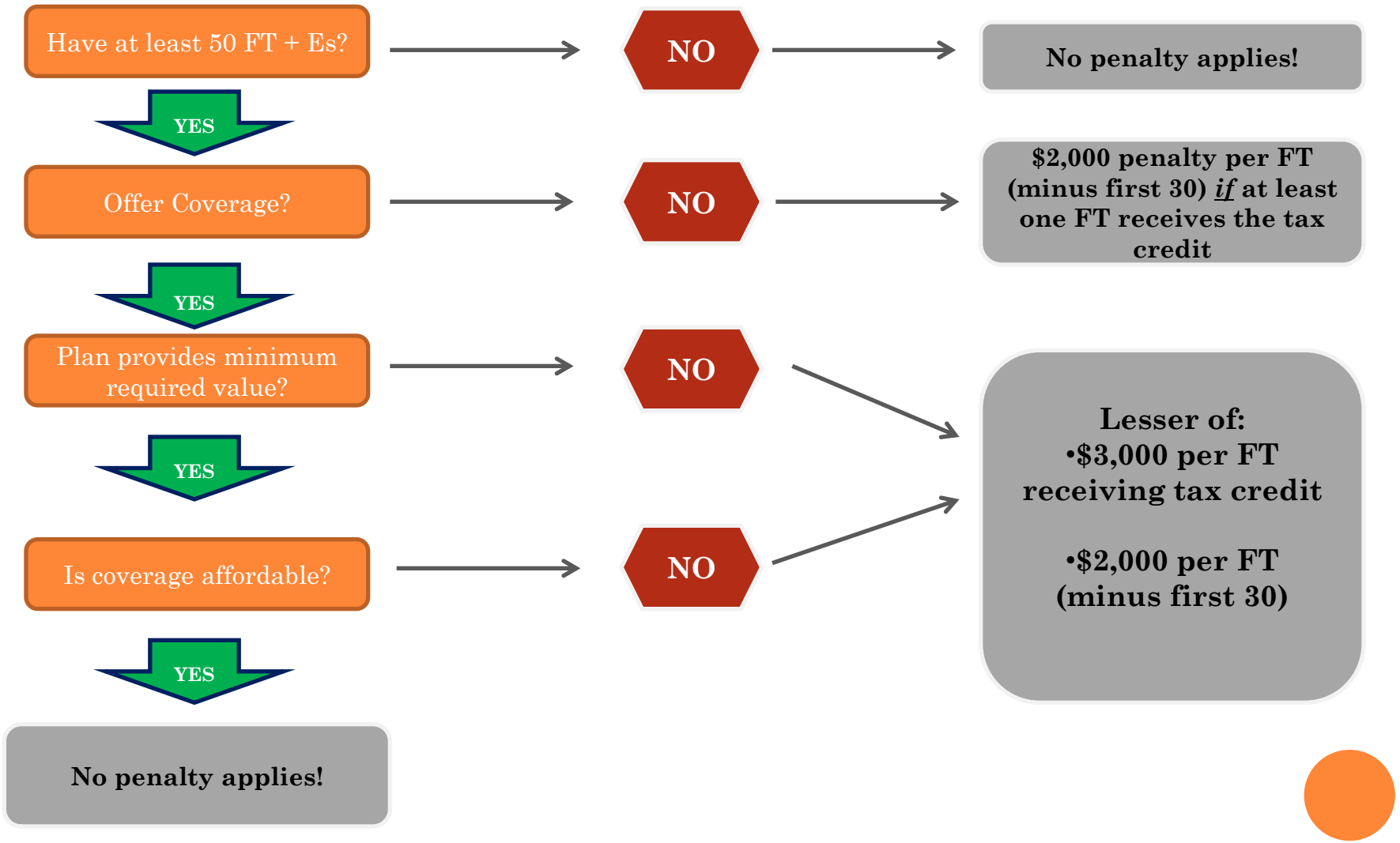
- Plan document (or insurance booklet/certificate for an insured plan)
- Summary plan description (SPD), including updates or summaries of material modifications (SMMs)
- Forms 5500 and attachments, including supporting documentation (if applicable)
- Summary annual reports (if required for plan)
- List of all plan service providers and related contracts
- All contracts with insurance companies
- Open enrollment materials, including documents describing cost responsibilities for the employer and employees
- Newborns' and Mothers' Health Protection Act notice (may be included in the SPD)
- Women's Health & Cancer Rights Act notice
- Annual Children's Health Insurance Program (CHIP) notice
- Materials describing any wellness programs or disease management programs offered by the plan, including rewards based on a health factor
- Documents showing compliance with HIPAA's portability rules, including certificates of creditable coverage, pre-existing condition exclusions and special enrollment rights
- Documents showing compliance with COBRA, including general notice, election notice, notice of COBRA unavailability, notice of early termination and notice of insufficient payment

- **If the plan has grandfathered status under the ACA, documents that verify the plan's status and the notice of grandfathered plan status**
- **If the plan has rescinded coverage, a list of those participants and dependents whose coverage has been rescinded, the reasons for the rescission and the notice of rescission**
- **Plan provisions regarding lifetime and annual limits and the notice describing enrollment opportunities for individuals who previously lost coverage due to a lifetime limit**
- **Summary of Benefits and Coverage and any 60-day advance notice of a mid-year material change to the plan**
- **Exchange notice**
- **For non-grandfathered plans, notice of patient protections and selection of providers**
- **For non-grandfathered plans, information on the plan's claims and appeals procedures**
- **A notice describing enrollment opportunities for children up to age 26 for plans with dependent coverage**

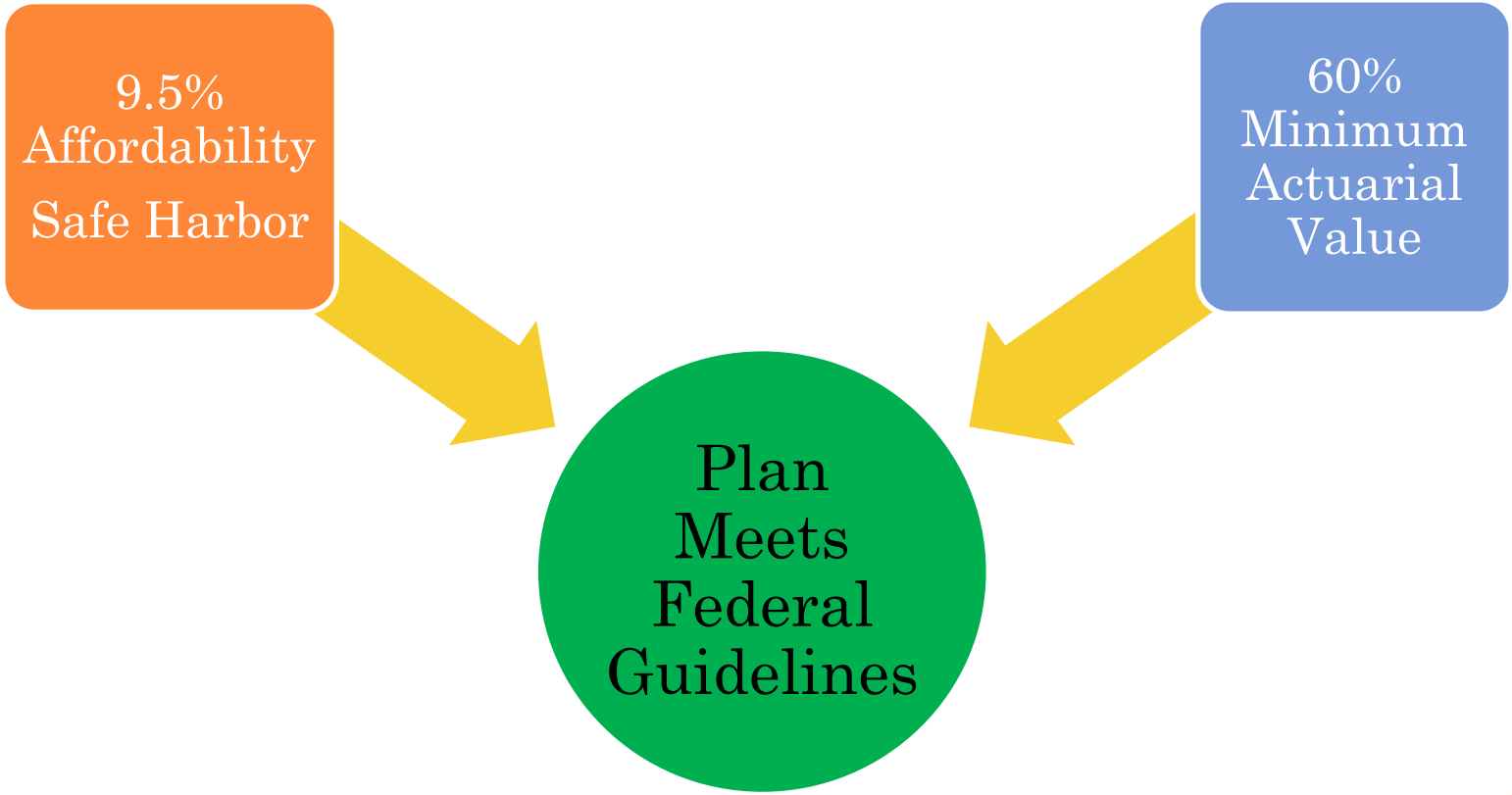
Employer Penalty

- *Pay or Play*
- *Two Tests*

"Pay or Play 2016"



Employer Penalty Rules



Marketplace Enrollment

- *Updates and Information*

Marketplace Enrollment

The Marketplace's open enrollment period for coverage during 2016 started on Nov. 1, 2015, and ends on Jan. 31, 2016. Many Employers have amended their Section 125 plans to allow for enrollment on Marketplace coverage.

Qualifying Life Events - If an individual experiences a qualifying life event, they are eligible to enroll in a Marketplace plan during the special enrollment period outside of the annual open enrollment period. Qualifying life events include the situations described below.

1. ***Personal circumstances change, including***:
   - Marriage, Birth of a child or Adoption or placement of child for adoption or foster care
   - Gaining citizenship Moving residence outside the insurance plan's service area
   - Leaving incarceration
2. ***An involuntary coverage change, which may include***:
   - Losing health coverage due to situations such as job-based coverage ending, aging off a parent's plan at 26, losing coverage through divorce or similar events. However, voluntarily giving up coverage, or losing coverage that is not minimum essential coverage, will NOT qualify you for special enrollment
   - Losing eligibility for Medicaid or CHIP
   - Becoming eligible for COBRA or having COBRA coverage expire (voluntarily dropping COBRA coverage is not a qualifying life event)
3. ***Gaining status as a member of an American Indian tribe***

4. For individuals already enrolled in Marketplace coverage, ***a change in income or household status that affects eligibility for premium tax credits or cost-sharing reductions*** can make you eligible to elect a change in coverage.

SUBSIDIES

- *Eligibility*
- *Premium Tax*
- *Cost Sharing*

Subsidy Eligibility

- To receive the premium tax credit assistance, a taxpayer must enroll in one or more qualified health plans (QHPs) through an Exchange and meet other specific criteria.
- **To be eligible for a premium tax credit, a taxpayer:**
- Must have household income for the year between 100 percent and 400 percent of the federal poverty line (FPL) for the taxpayer's family size;
- May not be claimed as a tax dependent of another taxpayer; and
- Must file a joint return, if married (unless the taxpayer meets certain criteria in IRS regulations that allow victims of domestic abuse and spousal abandonment to claim the premium tax credit as married filing separately).

- For purposes of the subsidies, "household income" means the sum of **a taxpayer's modified adjusted gross income** plus **the aggregate modified adjusted gross income of all other individuals who**:
- Are included in the taxpayer's family (meaning the individuals for whom a taxpayer properly claims a deduction for a personal exemption for the taxable year); and
- Are required to file a tax return for the taxable year.
- In addition, to be eligible for the tax credit, the taxpayer **cannot be eligible for minimum essential coverage** (such as coverage under a government-sponsored program or an eligible employer-sponsored plan). Employees who may enroll in an employer-sponsored plan, and individuals who may enroll in the plan because of a relationship with an employee, are generally considered eligible for minimum essential coverage if the plan is **affordable** and provides **minimum value**.

EXCHANGE HEALTH INSURANCE SUBSIDIES

Two types of subsidies	**Premium tax credits** are available for people with somewhat higher incomes (up to 400 percent of FPL), and reduce out-of-pocket premium costs for the taxpayer. **Reduced cost-sharing** is available for individuals with lower incomes (up to 250 percent of FPL). Through cost-sharing reductions, these individuals will be eligible to enroll in plans with higher actuarial values and have the plan, on average, pay a greater share of covered benefits. This means that coverage for these individuals will have lower out-of-pocket costs at the point of service (for example, lower deductibles and copayments).

Amount of the Premium Tax Credits

2015	
INCOME LEVEL	**EXPECTED CONTRIBUTION**
Up to 133% FPL	2.01% of income
133 – 150% FPL	3.02 – 4.02% of income
150 – 200% FPL	4.02 – 6.34% of income
200 – 250% FPL	6.34 – 8.10% of income
250 – 300% FPL	8.10 – 9.56% of income
300 – 400% FPL	9.56% of income

COST-SHARING REDUCTIONS

INCOME LEVEL	REDUCED MAXIMUM ANNUAL LIMITATION ON COST-SHARING FOR SELF-ONLY COVERAGE FOR 2016	REDUCED MAXIMUM ANNUAL LIMITATION ON COST-SHARING FOR FAMILY COVERAGE FOR 2016
100-150% FPL	$2,250	$4,500
150-200% FPL	$2,250	$4,500
200-250% FPL	$5,450	$10,900

Recent Regulatory and Legal Activity

- *Cadillac Tax Implementation*
- *Early Renewals and ACA*
- *PACE Act and Small Group Market Expansion Revised*
- *Automatic Enrollment Repealed*

Cadillac Tax

Cadillac Tax Implementation - Proposed or final regulations have not yet been issued

- The Cadillac tax provision is found in Internal Revenue Code (Code) Section 4980I. This provision taxes the amount of an employee's "excess benefit." The excess benefit is the amount by which the monthly cost of an employee's employer-sponsored health coverage exceeds the annual limitation. The tax is 40% of every dollar over the limit.
  - **For 2018, the statutory dollar limits are:**
  - **$10,200 per employee for self-only coverage; and**
  - **$27,500 per employee for other-than-self-only coverage.**
- The cost of applicable coverage for purposes of the Cadillac tax is determined under rules similar to those used for determining the COBRA applicable premium.

SMALL GROUP MARKET EXPANSION

- In 2016, the ACA would have expanded the small group insurance market to include employers with 100 or fewer employees
  - Historically, market rules have generally defined small groups as 2 to 50 eligible employees
  - Newly "small" groups would have faced:
    - More restrictive rating rules, which may increase premiums for some Additional benefit and cost-sharing requirements that could reduce benefit flexibility and increase premiums
    - Adverse selection in the market if more employers self-insure
- Some carriers were offering "early" renewals to avoid these mandates
  - **Changing the plan year could affect small ALE transitional relief**

SMALL GROUP MARKET EXPANSION

- As of October 1, 2015 the PACE Act has been passed by the U.S. House of Representatives and Senate.
- The PACE Act gives states the **option** of expanding their small group markets to include businesses with up to 100 employees.
- It has been signed in to law by the President due to bipartisan support of the change.
- The ACA required state small group markets to be expanded to businesses with up to 100 employees.
- The Act **eliminates** this requirement.

ACA's Automatic Enrollment Requirement Repealed

- On Nov. 2, 2015, President Obama signed into law the **Bipartisan Budget Act of 2015**, which included a provision **repealing the ACA's automatic enrollment requirement**.
- Therefore, this requirement will not take effect at any point, and employers will not be required to automatically enroll employees in their group health plan coverage.

Additional Questions?

THANK YOU!

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